

REMARKS

In the Office Action, the Examiner rejected the claims under 35 USC §102 and 35 USC §103. The claims have been amended to correct typographical errors and to further clarify the subject matter regarded as the invention. Claims 1-35 remain pending. The rejections are fully traversed below.

Reconsideration of the application is respectfully requested based on the following remarks.

REJECTION OF CLAIMS UNDER 35 USC §102

In the Office Action, the Examiner rejected claims 1-6, 22-24, 26-27, 30-31, and 32-35 under 35 USC §102 as being anticipated by Cloonan Patent No. 2002/0066110 A1.

Cloonan discloses a cable modem termination system (CMTS), which reduces the time required to switch over traffic from a failed circuit to a back up circuit. FIG. 1 shows a single CMTS. As shown and described with reference to FIG. 2, a single CMTS includes a number of cable interface cards. If a fault is discovered on one of the active cable interface cards, then the protection switch can re-route the traffic using the spare cable interface card. See paragraph [0028].

Cloonan discloses only a single CMTS. As set forth above, Cloonan relates to the failure of a circuit within a single CMTS and replacement of the failed circuit with another circuit.

Cloonan fails to disclose or suggest a backup CMTS and its response to the failure of an active CMTS.

With respect to claim 1, Cloonan neither discloses nor suggests receiving by a backup cable modem termination system subscriber information associated with one or more cable modems from an active cable modem termination system. While Cloonan discloses the prioritization of data packets, Cloonan fails to disclose or suggest prioritizing cable modems in any manner. Thus, Cloonan fails to disclose or suggest prioritizing by a backup cable modem termination system the cable modems using at least one of the subscriber information or a time of receipt of the subscriber information, the prioritized cable modems indicating an order in which the transmission of messages between the one or more cable modems and the backup cable modem termination system is to be restored. Cloonan also fails to disclose the polling of cable modems in any manner. It follows that Cloonan fails to disclose or suggest a backup cable modem termination system polling the cable modems in the order indicated by the prioritized cable modems, thereby enabling the transmission of messages between the one or more cable modems and the backup cable modem termination system to be restored.

The dependent claims recite additional limitations that further distinguish them from the cited reference. The dependent claims depend from one of the independent claims and are therefore patentable over the cited art for at least the same reasons. Hence, it is submitted that the dependent claims are patentable over the cited art. The additional limitations recited in the independent claims or the dependent claims are not further-discussed as the above- discussed limitations are clearly sufficient to distinguish the claimed invention from the cited art. Thus, it is respectfully requested that the Examiner withdraw the rejection of the claims under 35 USC § 102.

REJECTION OF CLAIMS UNDER 35 USC §103

In the Office Action, the Examiner rejected claims 7-21, 25, and 28-29 under 35 USC §103 as being unpatentable over Cloonan in view of Gummalla, U.S. Patent Number 6,999,414 B2, ('Gummalla' hereinafter) This rejection is fully traversed below.

Gummalla fails to cure the deficiencies of the primary reference. It is also important to note that Gummalla relates to the combining requests for data bandwidth by a data provider for transmission of data. See title. The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Cloonan in view of Gummalla to increase the efficiency of providing requested bandwidth data. The Examiner further asserts that "one would be motivated to do so to distribution data from the CMTS to the cable modem." However, it is important to note that the claimed invention does not directly relate to the distribution of data, but rather the establishing of communication between a backup CMTS and one or more cable modems. It therefore appears that there fails to be a motivation to combine the cited references. Even if the references were combined, they would fail to achieve the desired result, which is to restore communication between a backup CMTS and one or more cable modems upon failure of an active CMTS. Accordingly, Applicant respectfully submits that claims 7-21, 25, and 28-29 are patentable over the cited references.

The Examiner rejected claims 30-31 under 35 USC §103 as being unpatentable over Cloonan in view of Burroughs, U.S. Pub. No. 2002/0144284 A1, ('Burroughs' hereinafter). This rejection is fully traversed below.

The Examiner seeks to cure the deficiencies of Cloonan with Burroughs. However, Burroughs fails to cure the deficiencies of the primary reference.

Burroughs discloses arranging cable modems and CMTS modules, connected to a single cable so as to provide cable modem service to a respective set of the cable modems, are arranged so one of the CMTSs can backup the other. Each of the CMTSs simultaneously broadcasts its downstream channel on its own assigned one of the cable channels that is accessible by the cable modems for which it is assigned to provide the primary downstream channel, and each cable modem is assigned in addition to its primary downstream channel at least one alternative downstream channel which is supplied by a CMTS other than its primary CMTS, so that when the primary downstream channel of a cable modem becomes invalid the cable modem switches to the alternative downstream channel. See Abstract.

It is important to note that Burroughs requires that the cable modem provide parameters to the CMTS. See page 5, paragraph 48. More particularly, Burroughs discloses the transmission of a registration request message from a cable modem to the CMTS. See page 4, paragraph 37. This process is performed when the cable modem determines that the primary downstream channel is not valid. See page 3, paragraph 32. As a result, the intelligence (e.g., switching to a downstream channel) is implemented in the cable modem rather than the CMTS. Burroughs fails to disclose or suggest communication between two different CMTSs.

Moreover, Burroughs requires that the cable modems actively switch to a backup CMTS, as well as provide parameters to their backup CMTS. As a result, Burroughs teaches away from communicating between a backup CMTS and an active CMTS. Moreover, since the cable modems actively initiate communication with their backup CMTS, it would be unnecessary for the backup CMTS to prioritize the order in which communication with the cable modems should be established. Similarly, it would be unnecessary for the backup CMTS to poll the cable modems to establish communication. As such, Applicant respectfully submits that Burroughs

teaches away from the claimed invention. Accordingly, Applicant respectfully submits that claims 30-31 are patentable over the cited references.

SUMMARY

If there are any issues remaining which the Examiner believes could be resolved through either a Supplemental Response or an Examiner's Amendment, the Examiner is respectfully requested to contact the undersigned attorney at the telephone number listed below.

Applicants hereby petition for an extension of time which may be required to maintain the pendency of this case, and any required fee for such extension or any further fee required in connection with the filing of this Amendment is to be charged to Deposit Account No. 50-0388 (Order No. CISCP251).

Respectfully submitted,

BEYER WEAVER LLP

A handwritten signature in black ink, appearing to read 'Elise R. Heilbrunn', is written over a horizontal line.

Elise R. Heilbrunn
Reg. No. 42,649

BEYER WEAVER LLP
P.O. Box 70250
Oakland, CA 94612-0250
(510) 663-1100